1944.

File No. O. Gambling 44

A **BRANCH**

Subject:— Opinions under the Bombay Prevention of Gambling Act, 1887

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C O N T E N T S.

Legal Department File No. C Gambling 1944.

Sr. No.	Compilation No.	Subject.	Pages.
	C Gambling 1944.	Opinions under the Bombay Prevention of Gambling Act 1887.	
	R.No. 12059 30-12-43.	Sec. 6(2). Dy. Supdt. of & there is specially empowered by Govt. should be empowered by name and not merely by virtue of his office.	1-3.

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N.W.P. 6/7 5c.

NKB 12/1

PHB 12/1

L.D.P.I. No. 12059
30-12-43.

Submitted.

2. Recently in two Poona cases, the validity of the warrant issued by the Deputy Superintendent of Police, City Sub-Division, Poona, under section 6 of the Bombay Prevention of Gambling Act, 1887, was challenged on the ground that the D.S.P., was empowered by Government by virtue of his office only and not by name, that such authorisation was not sufficient for the purpose of section 6 of the said Act, that for the purpose of section the officer must be so empowered by name and that as it was not so done, the warrant issued by him was not legal. To support this contention, the Sind Ruling in the case of Emperor vs. Voho S/o Chandumal and others reported in A.I.R. (30 1943 Sind 107 was cited. The trying Magistrate concurred with this Ruling but the said two cases were decided against prosecution on questions of fact only. The point of law raised above is involved in similar cases too. The H.D. has forwarded these papers follwing a reference from the Dist. Magistrate, Poona, for an authoritative decision on the point. The question raised for B.L.A's consideration is whether the empowering of Police officers may be either by name or by virtue of office, inview of the provisions of section 15 of the Bombay General Clauses Act, 1904.

3. Section 6(1) of the Bombay Prevention of Gambling Act, 1887, lays down that the special warrant must be issued by a Magistrate of the First Class or a District Superintendent of Police or by an Assistant or Deputy Superintendent of Police specially empowered by the Provincial Government in this behalf. It does not specifically mention that the power to issue such special warrant is to be confered on the Asst. or Deputy Supdt. of Police by name only. The general

provision about the manner of conferring powers to officers is contained in section 15 of the Bombay General Clauses Act, 1904 which runs as under:-

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In Emperor v. Udho Chandumal & others, (A.I.R. 1943 Sind 107), the Chief Court, Sind, has held that section 6(2) of the Bombay Prevention of Gambling Act, 1887 requires that when a Deputy Superintendent of Police is especially empowered by Government under that section, he should be empowered by name and not merely by virtue of his office. The question referred to the P.L.A. for consideration is whether the view expressed by the Sind Court is correct.

2. There is apparently no ruling of the Bombay High Court on the point raised. The Sind Court construes the phrase "specially empowered by Government ~~xfxxxcertxxxx~~ in this behalf" as implying the exercise by Government of a certain selection or discrimination as regards an individual on whom the special power is to be conferred. This is no doubt a possible interpretation, but it seems to be too narrow and against the long-established and unchallenged practice of Government in this Province. The sounder view would be to interpret it in a somewhat wider sense in that the empowerment need not necessarily be by name only but can also extend to particular officers who by virtue of their office exercise jurisdiction over selected areas. Section 15 of the Bombay General Clauses Act, 1904 (which corresponds to section 15 of the General Clauses Act, 1897) lays down that where, by any Bombay Act, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, ~~any~~ such appointment if it is made after the commencement of this Act, may be made either by name or by virtue of office. This provision of the General Clauses Act seems to have been overlooked by the Sind Court. If the Magistrates in Bombay follow the Sind Court's ruling, it would be advisable to lodge an appeal in the Bombay High Court in a suitable case.

Sd/-

Remembrancer of Legal Affairs.

U.R. to H.D., No. 470 , dated the 19th January 1944.

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